

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NJD:NEW:TL-N-4315-00
RABaxer

date: July 31, 2000

to: Compliance Territory Manager
Marilyn Walter

LMSB Group 1566

from: District Counsel, New Jersey District, Newark

subject: [REDACTED]
Form 872
Tax Period: [REDACTED]

This memorandum has been prepared in response to your request for assistance and guidance from our office with respect to the effects of the merger with [REDACTED] on securing of a Form 872 for the above taxpayer. The memorandum is based upon the facts outlined below. If the factual statement is incorrect, please notify this office so that we may determine the effect, if any, on the advice rendered.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

ISSUE

What corporate name should appear on a Form 872 and who should sign the document?

FACTS

The facts as we understand them are as follows:

You have under examination [REDACTED] (" [REDACTED] ") for the year [REDACTED] and need to extend the statute of limitation by means of a Form 872. [REDACTED] was the common parent that filed on a consolidated return basis for [REDACTED]. In [REDACTED] [REDACTED] merged into a subsidiary of [REDACTED] (which recently changed its name to [REDACTED]) (" [REDACTED] "). [REDACTED] was the surviving company in the merger and is now a subsidiary of [REDACTED] and will be filing future returns as part of [REDACTED]'s consolidated return.

You have provided us with two documents. The first is a filing by [REDACTED] indicating that all of the directors of [REDACTED] are removed and [REDACTED] new directors are appointed. This document is signed by [REDACTED] (" [REDACTED] ") as Chief Operating Officer of [REDACTED]. The second is a filing by [REDACTED] indicating that all of the present officers of [REDACTED] are removed and names [REDACTED] new officers of [REDACTED]. One of the newly named officers is [REDACTED], Executive Vice President and Chief Operating Officer. Both documents appear to have been executed on [REDACTED].

You currently have a Form 872 for the year [REDACTED] in the name of [REDACTED] signed by [REDACTED] as Chief Operating Officer. However, there is no corporate name listed above [REDACTED]'s signature.

The merger of [REDACTED] into [REDACTED] was not a reverse acquisition as described in Treas. Reg. § 1.1502-75(d)(3)(i).

DISCUSSION

Pursuant to the merger [REDACTED] is the surviving corporation after the merger and does not go out of existence.

Where the common parent of a consolidated group remains in existence, even if it no longer is the common parent, it remains the agent for the group with regard to years in which it was the common parent of the group. See, Treas. Reg. §§ 1.1502-77(a); 1.1502-77T(a)(4)(i).

The Form 872 secured by you has the correct caption which would be [REDACTED]. [REDACTED] would be an authorized officer of [REDACTED] to sign the Form 872. However, as there is no corporate name above [REDACTED]'s signature, there could be some confusion as to which capacity he is in when signing the document. This is because he is the Chief Operating Officer of both [REDACTED] and [REDACTED]. Additionally, you did not indicate whether or not the Form 872 was executed before or after [REDACTED].

We would recommend that the Form 872 be returned to the taxpayer to insert the correct corporate name above [REDACTED]'s signature or that a new Form 872 be secured if the existing one was signed prior to [REDACTED].

If you have any questions or need further information, please contact Robert A. Baxer at (973) 645-2598.

/s/
PATRICK E. WHELAN
Assistant District Counsel

NOTED:

/s/
MATTHEW MAGNONE
District Counsel

cc: John Capalbo - LMSB Group 1566